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No. 81-2378

In the Supreme Court of the United States

OCTOBER TERM, 1982

YACHTS AMERICA, INC., AND THOMAS BRUCE WILSON,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Court of Claims properly held that a prior consent decree entered by a state court conclusively determined that petitioners had no equitable interest in property condemned by the United States and, accordingly, that under principles of collateral estoppel, petitioners were precluded from litigating their claim for just compensation for the taking of that property.

2. Whether the Court of Claims properly held that petitioners were not deprived of any "rights" by virtue of a congressional amendment (Pub. L. No. 94-578, 90 Stat. 2732) that exempted petitioner's marina property from the coverage of a statute (Pub. L. No. 93-444, 88 Stat. 1304) that provided generally for the "orderly termination" of all operations on the lands designated for condemnation.

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OPINION BELOW

The opinion of the Court of Claims (Pet. App. 11a) is reported at 673 F. 2d 356.

JURISDICTION

The judgment of the Court of Claims was entered on February 24, 1982. A petition for rehearing was denied on April 2, 1982 (Pet. App. 38a). The petition for a writ of certiorari was filed on June 28, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

STATEMENT

1. In order to preserve the view from George Washington's historic home at Mount Vernon, Congress provided for the condemnation, effective October 15, 1974, of certain real property located on the Potomac River, which included a marina owned by Fort Washington Marina, Inc. ("Fort Washington"). Pub. L. No. 93-444, 88 Stat. 1304. The

statute also provided for the "orderly termination" of operations in the various parcels comprising the condemned property, including the subject marina property (88 Stat. 1305).

Petitioners were lessees of the marina property at the time of the taking. They had entered into a two-year lease agreement with Fort Washington beginning November 1, 1972, and ending October 31, 1974. The lease granted petitioners an option, exercisable prior to July 31, 1974, to purchase the marina property (Pet. App. 12a).

Prior to the legislative taking by the United States, numerous disputes arose between petitioners and their lessor, Fort Washington, in connection with alleged breaches of the lease agreement (Pet. App. 12a). As a result of these disputes, petitioners instituted the following lawsuits in various Maryland state courts: *Yachts America, Inc.* v. *Fort Washington Marina, Inc.*, Equity No. D-8967 (Cir. Ct. Prince George's County); *Yachts America, Inc.* v. *Fort Washington Marina*, Law No. 56,019 (Cir. Ct. Prince George's County); *Yachts America Inc.* v. *Fort Washington Marina*, Law No. 5665 (Cir. Ct. St. Mary's County). In connection with these suits, petitioners contended that they had properly exercised the option to purchase the marina property on July 20, 1974, and that Fort Washington breached the lease by not selling the property to them. In the equity action, petitioners requested specific performance to have the property conveyed to them (Pet. App. 12a).

Petitioners and Fort Washington settled all of their litigation on October 8, 1975, by the entry of a consent decree (Pet. App. 27a) and the execution of a mutual release (*id.* at 29a). Under the terms of the consent decree, petitioners were awarded a money judgment in the sum of $300,000 against Fort Washington; specific performance, as prayed

for by petitioners, was denied; and all other claims were dismissed with prejudice (*id.* at 27a-28a). The mutual release, which incorporated the consent decree, was "intended to effect the extinguishment of any and all * * * issues * * * *arising out of* directly or indirectly resulting from *a certain Lease Agreement* entered into on October 30, 1972 * * * *and all sales or other agreements attendant thereto*" (Pet. App. 29a; emphasis added). The release expressly acknowledged the taking of the marina by the United States approximately one year earlier,[1] but the parties nonetheless included an assignment to petitioners of "any and all interest that [Fort Washington] *may have presently* in the property known as Fort Washington Marina" (*id.* at 31a; emphasis added).

2. On October 14, 1975, approximately one week after signing the consent decree and mutual release, petitioners filed a complaint in the United States District Court for the District of Maryland naming Fort Washington, the United States, and the escrow agent holding the $750,000 as defendants (Pet. App. 14a). Petitioners alleged, *inter alia*, that the taking was unconstitutional, that they had validly exercised the option to purchase the land, that Fort Washington had breached the lease agreement and that petitioners had an assignment of Fort Washington's interest in the marina property (*ibid.*).

The district court, by memorandum and order dated October 6, 1976, held that Pub. L. No. 93-444 is constitutional. *Yachts America, Inc.* v. *United States*, Civ. No.

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[1]Prior to the conclusion of the litigation in the Maryland state courts, the United States and Fort Washington, in June 1975, negotiated the sum of $750,000 as just compensation for the legislative taking of the marina property. The settlement agreement provided that, in view of the pending litigation and two mortgages outstanding on the property, the monies would be held in escrow until the conclusion of all court proceedings (Pet. App. 13a-14a).

H-75-1480 (D. Md.), slip op. 3-4. The court also dismissed petitioners' claims against Fort Washington, as barred by res judicata. The court stated (slip op. 4; emphasis added):

> After a review of the record, this Court is satisfied that *res judicata* effect should be given to the prior consent decree in the state court suit between these same parties. * * * The respective rights of the parties under the original lease agreement were fully settled in the state court action. By the terms of the consent decree, Yachts America secured a judgment in the amount of $300,000, and all claims between the parties (including necessarily the claims asserted by the plaintiffs herein) were dismissed with prejudice. *Plaintiffs here would not be entitled to claim any part of the funds to be distributed to defendant Fort Washington to compensate it for the taking.* * * *

Subsequently, petitioners' remaining claims were dismissed without prejudice, and petitioners never appealed from the district court's rulings (Pet. App. 14a).[2]

3. On June 4, 1979, petitioners filed the instant action in the United States Court of Claims. The court granted summary judgment for the United States and against petitioners on petitioners' claim for just compensation for the 1974

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[2]During the pendency of the federal court proceedings, the United States, on December 10, 1975, offered petitioners a letter agreement permitting them to continue as the operator of the marina for purposes of the "orderly termination" provision in Pub. L. No. 93-441, 88 Stat. 1304 (Pet. 10). Petitioners, however, never accepted this offer (Pet. 12), and on October 21, 1976, Congress enacted Pub. L. No. 94-578, 90 Stat. 2732, which deleted the marina property from the "orderly termination" provision. See pages 8-9, *infra*.

Notwithstanding the existence of considerable dispute as to petitioners' status as occupiers of the marina property, they have continued to possess and operate the marina (Pet. App. 22a, 24a).

legislative taking of the marina property and on petitioners' claim for compensation for an alleged "taking" of their purported right to "orderly termination" of their operations (Pet. App. 24a).[3] With respect to the first claim, the court held (*id.* at 20a) that under principles of collateral estoppel petitioners were precluded from relitigating an essential element of their claim, viz., whether they obtained equitable ownership of the marina property through an exercise of the purchase option (*id.* at 20a). The court found that this claim had necessarily been abandoned as part of the comprehensive settlement with Fort Washington in the state court and therefore petitioners were estopped to assert this claim in the Court of Claims (*id.* at 16a-21a). As for the second claim, the court held that petitioners were not unlawfully deprived of any "right" to "orderly termination" of the marina operation (*id.* at 23a).

ARGUMENT

1. Petitioners' primary argument (Pet. 20-25) is that the Court of Claims erroneously applied the doctrine of collateral estoppel to their just compensation claim. The decision of the Court of Claims, which involves no more than the interpretation of petitioners' state court consent decree, is correct and, in any event, raises no issue warranting review by this Court.

Collateral estoppel is available to the United States in this case if the issue of petitioners' equitable ownership was disposed of as part of the Maryland state court consent decree. See *Montana* v. *United States*, 440 U.S. 147, 153 (1979); *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 326 n.5 (1979). In this regard, it is of no consequence that

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[3]Petitioners' remaining claims and the United States' counter-claim were remanded to a trial judge for further adjudication (Pet. App. 12a).

petitioners settled this case rather than litigated it to final judgment. See *United States* v. *Southern Ute Tribe or Band of Indians*, 402 U.S. 159, 161 (1971).

The prior state court proceedings effectively resolved whether petitioners exercised the purchase option and became equitable owners of the marina property. As found by the Court of Claims (Pet. App. 12a, 17a), petitioners pleaded exercise of the purchase option in the state court proceedings. Further, the consent decree which terminated the litigation entered a money judgment of $300,000 in favor of petitioners, denied specific performance, and ordered "that all other claims * * * and/or all other issues * * * be * * * dismissed with prejudice" (*id.* at 27a-28a). Under these circumstances, the Court of Claims properly held (*id.* at 18a) that this language constituted a final judgment against petitioners on the issue of exercise of the purchase option. Moreover, the court also properly noted (*id.* at 19a-20a) that this conclusion is reinforced by the broad, preclusive language in the mutual release, under which petitioners relinquished any claims arising out of "a certain Lease Agreement" and the "sales or other agreements attendant" to the lease (*id.* at 29a).[4] The Court of Claims thus properly decided that petitioners included this issue as part of their overall settlement and therefore they are estopped to relitigate it. See *Red Lake Band* v. *United States*, 607 F. 2d 930, 934 (Ct. Cl. 1979); *Green* v. *Ancora-Citronelle Corp.*, 577 F. 2d 1380, 1383 (9th Cir. 1978); 1B *Moore's Federal Practice* para. 0.444[1] (2d ed. 1982).

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[4]Notwithstanding the consent decree and mutual release, petitioners argue (Pet. 22), based on an interlocutory order entered in the state court proceedings (Pet. App. 33a), that they actually prevailed on the issue of the proper exercise of the option. As the Court of Claims held, however (*id.* at 20a), interlocutory decrees are not final and are not accorded preclusive effect. *Barrington Manor Apartments Corp.* v. *United States*, 392 F. 2d 224, 228 n.4 (Ct. Cl. 1968); *United States* v. *Stonehill*, 420 F. Supp. 46, 52 (C.D. Cal. 1976).

Petitioners challenge the court's findings with respect to the parties' intent by arguing (Pet. 12, 24) that the assignment provision in the mutual release reflects that they were entitled to the $750,000 paid into escrow and that they were free to seek just compensation from the United States. These contentions are without merit. First, the Maryland district court explicitly held that petitioners "would not be entitled to claim any part of the funds to be distributed to defendant Fort Washington to compensate it for the taking." *Yachts America, Inc.* v. *United States, supra*, slip op. 4. Petitioners never appealed this judgment and may not now collaterally attack it. Second, nothing in the language of the assignment (Pet. App. 31a) indicates that petitioners could seek just compensation from the United States. The assignment was of Fort Washington's interest in the marina property—as of October 8, 1975, well after the government's taking. Since by that time title to the property had already vested in the United States and the United States had already paid Fort Washington $750,000 as just compensation (see Pet. 6), petitioners obviously acquired no rights as against the United States.[5]

Finally, petitioners argue (Pet. 25) that "equitable considerations" make application of the doctrine of collateral estoppel inappropriate under the circumstances of this case.[6] A balancing of the equities, however, strongly supports the court's finding of issue preclusion. Petitioners

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[5]See also Section 1 of the Assignment of Claims Act of 1940, 31 U.S.C. 203 (rendering void an assignment, such as this, if construed as an assignment of a claim upon the United States).

[6]In making this argument, petitioners rely on *Red Lake Band* v. *United States, supra*, 607 F. 2d at 934-935, but that case is clearly inapposite. In *Red Lake Band*, the court was persuaded that the parties did not foresee the possibility of subsequent litigation raising the issue already determined. *Id.* at 934. By contrast, petitioners, by their own admission (Pet. 4), were asserting a claim to compensation from the

never paid Fort Washington the purchase price for the property, but they received a $300,000 judgment in settlement of all their claims against Fort Washington. The United States has already paid out $750,000 as just compensation for the marina property and petitioners were unable to acquire any of that money because they voluntarily settled their claims with Fort Washington. Under the circumstances, if petitioners were permitted to collect additional money from the government, they would receive a complete windfall at the expense of the United States. Collateral estoppel thus was properly applied to the unique facts of this case.

2. Petitioners argue (Pet. 25-26) that they were deprived of a statutory right to "orderly termination" of the marina operations without just compensation. This contention, which is based on the proper interpretation of Pub. L. No. 93-444, 88 Stat. 1304, and Pub. L. No. 94-578, 90 Stat. 2732 (Pet. 13, 15, 26) is groundless. In Pub. L. No. 93-444, Congress provided for the "orderly termination" of all operations on the condemned land. Congress subsequently deleted the marina property from the ambit of this provision. Pub. L. No. 94-578. The House and Senate reports explain that the amendment was passed to make clear that Congress had not intended in its original statute "to force the closure" of the marina. Thus, the amendment was designed solely "to permit the continued operation" of the facility. S. Rep. No. 94-1158, 94th Cong., 2d Sess. 11-12 (1976); H.R. Rep. No. 94-1162, 94th Cong., 2d Sess. 6 (1976). The decision of the Court of Claims is faithful to that intent and does not warrant review by this Court. In any event, petitioners' continuing possession and operation

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United States as early as October 28, 1974, nearly a full year prior to the resolution of the state court actions under the terms of the consent decree and mutual release.

of the marina property (Pet. App. 22a, 24a) undermines their claim that they have been deprived of any rights.[7]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[7]Petitioners also appear to raise implicitly a claim that the United States failed to accord them equal protection in treating Marshall Hall differently than the marina property (Pet. 26). Petitioners have pointed to nothing in the record to support their claim that the two properties are similarly situated. To the contrary, even a cursory examination of the record reflects significant differences. Thus, unlike Marshall Hall, the marina property was subsequently excluded from the orderly termination provision. Moreover, petitioners never effectively accepted the National Park Service's offered permit for continued operation (Pet. 12).

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